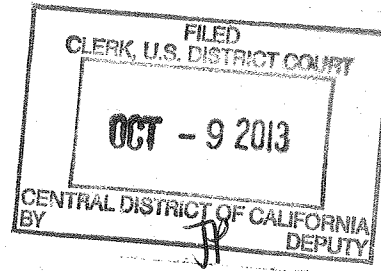


Douglas Kruschen
P.O. Box 465
Agoura Hills, CA 91376-0465
(805) 225-3328
(Plaintiff Pro Se)



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DOUGLAS KRUSCHEN, an
individual,

Plaintiff

v.

FMA ALLIANCE, LTD., a private
limited company,

Defendant

CV 13-7504 PSG (MRN X)
Case No.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

(Unlawful Debt Collection
Practices)

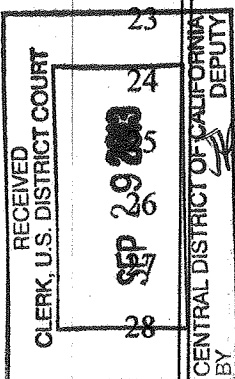
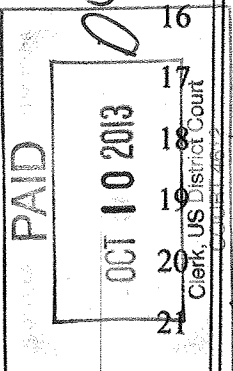
Judge:
Dept.:
Trial Date:

COMES NOW Plaintiff DOUGLAS KRUSCHEN, an individual, and
for causes of action against Defendant, alleges as follows:

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (TCPA).
2. Among its provisions, the TCPA precludes any person from making a call using an automatic telephone dialing system or an artificial or prerecorded voice to a cellular phone without

IS
21



- 1 the prior express consent of the party called. 47 U.S.C. §
2 227(b)(1)(A)(iii).
- 3 3. The TCPA further precludes the use of an artificial or
4 prerecorded voice to deliver a message without the prior
5 express consent of the called party. 47 U.S.C. §
6 227(b)(1)(B).
- 7 4. The TCPA is a strict liability statute. Each call in violation of
8 the statute is subject to a \$500.00 penalty. 47 U.S.C. §
9 227(b)(3)(B).
- 10 5. If the caller willfully or knowingly violates the statute, then
11 each statutory penalty can be trebled (\$1,500.00). 47 U.S.C.
12 § 227(b)(3).
- 13 6. Count II of Plaintiff's Complaint is based on the Fair Debt
14 Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA).
- 15 7. Count III of Plaintiff's Complaint is based on the Rosenthal
16 Fair Debt Collection Practices Act, *Cal. Civ. Code* § 1788 *et*
17 *seq.* (RFDCPA).

18 JURISDICTION AND VENUE

- 19
- 20 8. Jurisdiction of this court arises pursuant to 47 U.S.C. §
21 227(e)(6)(E)(i), which states that such actions may be
22 brought and heard before "a district court of the United
23 States."
- 24 9. 28 U.S.C. § 1367 grants this court supplemental jurisdiction
25 over the state claims contained therein.
- 26 10. Defendant conducts business in the state of California, and
27 therefore, personal jurisdiction is established.
- 28 11. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

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PARTIES

1 23. At all relevant times, Defendant acted through its agents,
2 employees, officers, members, directors, heirs, successors,
3 assigns, principals, trustees, sureties, subrogees,
4 representatives, and/or insurers.

5 **FACTUAL ALLEGATIONS**

6 24. At all times relevant, Plaintiff's residential telephone lines
7 have been registered with the Federal Trade Commission's
8 National Do-Not-Call Registry.

9 25. At all times relevant, Plaintiff's cellular telephone lines have
10 been registered with the Federal Trade Commission's
11 National Do-Not-Call Registry.

12 26. Defendant receives inbound and places outbound telephone
13 calls to and from (281) 670-1540, (281) 670-1572, (281)
14 670-1584, (281) 670-1600.

15 27. Between March 4, 2013, and April 2, 2013, Defendant made
16 repeated telephone calls to Plaintiff by utilizing ATDS, and
17 using an artificial or prerecorded voice, disclosed a third-
18 party's alleged debt.

19 28. Between March 4, 2013, and April 2, 2013, Plaintiff
20 repeatedly informed Defendant, by pressing "3" on the
21 telephone keypad as instructed by Defendant, the calls were
22 improper.

23 29. On April 3, 2013, Defendant placed an autodialed telephone
24 call to Plaintiff, and using a live voice, refused to identify
25 herself despite Plaintiff's request.
26
27
28

1 30. Between March 4, 2013, and the filing of this action, Plaintiff
2 and Defendant have been unable to reach an agreement to
3 settle the matter amicably.

4 **COUNT I**

5 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**
6 **PROTECTION ACT (TCPA), 47 U.S.C. § 227 et seq.**

- 7 31. Congress first passed the Telephone Consumer Protection
8 Act, 47 U.S.C. § 227 et seq. (TCPA) in 1991 in response to
9 consumer concerns about the growing number of unsolicited
10 telephone calls to their homes and the increasing use of
11 automated and prerecorded messages.
- 12 32. The TCPA imposes restrictions on the use of the telephone
13 network-both landline and wireless-for unsolicited calls by
14 telephone and facsimile.
- 15 33. The Act prohibits certain categories of calls made using an
16 automated telephone dialing system and/or prerecorded
17 calls to wireless numbers including SMS/text message calls.
- 18 34. The TCPA also prohibits non-emergency commercial calls to
19 residential phones using an artificial or prerecorded voice
20 without the recipients' prior written consent.
- 21 35. The TCPA holds, in relevant part at 47 U.S.C. §
22 226(b)(1)(B):
23

24 *"It shall be unlawful for any person within the United*
25 *States, or any person outside the United States if the*
26 *recipient is within the United States....to initiate any*
27 *telephone call to any residential telephone line using*
28

an artificial or prerecorded voice to deliver a message
without the prior express consent of the party....”

36. The TCPA is a strict liability statute.
37. Plaintiff never gave express consent for Defendant to contact him.
38. Plaintiff never gave express consent for Defendant to use an artificial or prerecorded voice in communicating with him, or to deliver a message.
39. Defendant violated § 227(b)(1)(B) of the TCPA by repeatedly initiating automated telephone calls to Plaintiff's residential telephone line(s) using an artificial or prerecorded voice to deliver a message, without the prior express consent of the Plaintiff.
40. Defendant violated § 227(b)(1)(A)(iii) of the TCPA by repeatedly initiating automated telephone calls to Plaintiff's cellular telephone line(s) using an artificial or prerecorded voice to deliver a message, without the prior express consent of the Plaintiff.

COUNT II

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA), 15 U.S.C. § 1692 et seq.

41. Plaintiff repeats, re-alleges and incorporates by reference each of the foregoing paragraphs, and each and every part thereof with the same force and effect as though set out at length herein.
42. The FDCPA was enacted to “eliminate” a number of activities and conduct on the part of debt collectors such as

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1 "abusive debt collection practices by debt
2 collectors...and...to protect consumers against debt
3 collection abuses." 15 U.S.C. § 1692(e). To that end, the
4 FDCPA holds, in relevant part, that,

5 "any debt collector communicating with any person
6 other than the consumer for the purpose of acquiring
7 location information about the consumer shall –

8 (1) identify himself, state that he is confirming or
9 correcting location information concerning the
10 consumer, and, only if expressly requested,
11 identify his employer;

12 (2) not state that such a consumer owes any
13 debt;

14 (3) not communicate with any such person more
15 than once unless requested to do so by such
16 person or unless the debt collector reasonably
17 believes that the earlier response of such person
18 is erroneous or incomplete and that such person
19 now has correct or complete location
20 information." 15 U.S.C. § 1692(b).

21 The FDCPA, *inter alia*, also states that a debt collector "may
22 not use any false, deceptive, or misleading representation or
23 means in connection with the collection of any debt," 15
24 U.S.C. § 1692(e), and "may not use unfair or unconscionable
25 means to collect or attempt to collect any debt," 15 U.S.C. §
26 1692(f).
27
28

- 1 43. Defendant knowingly, intentionally and deliberately routinely
2 engaged in numerous acts or omissions prohibited by the
3 FDCPA, including, but not limited to:
- 4 44. Defendant violated § 1692(b)(1) of the FDCPA by failing to
5 "identify himself, state that he is confirming or correcting
6 location information concerning the consumer, and, [when
7 requested] requested, identify his employer."
- 8 45. Defendant violated § 1692(d)(5) of the FDCPA by "causing a
9 telephone to ring...repeatedly or continuously with intent to
10 annoy, abuse, or harass any person at the called number."
- 11 46. The foregoing acts of Defendant constitute violations of the
12 FDCPA.
- 13 47. Accordingly, as a direct and proximate result of Defendant's
14 outrageous conduct and acts, Plaintiff suffered both
15 emotional distress and economic losses; Defendant's
16 conduct has caused Plaintiff emotional distress including but
17 not limited to embarrassment, humiliation, anger, anxiety,
18 and fear.
19

20 **COUNT III**

21 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT**
22 **COLLECTION PRACTICES ACT (RFDCPA), Cal. Civ. Code § 1788 et**
23 **seq.**

- 24 48. Plaintiff repeats, re-alleges and incorporates by reference
25 each of the foregoing paragraphs, and each and every part
26 thereof with the same force and effect as though set out at
27 length herein.
28

56. Any other relief as the court deems appropriate.

Count II:

57. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,

58. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k,

59. Costs and reasonable attorney's fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k, and

60. Any other relief as the court deems appropriate.

Count III:

61. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act,

62. Statutory damages of up to \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.30(b),

63. Costs and reasonable legal fees pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.30(c), and

64. Any other relief as the court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, DOUGLAS KRUSCHEN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: September 23, 2013

By: Douglas Kruschen
(Plaintiff Pro Se)

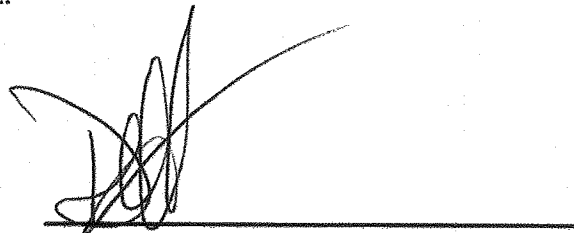
VERIFICATION OF COMPLAINT AND CERTIFICATION**STATE OF CALIFORNIA**

Plaintiff, DOUGLAS KRUSCHEN, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I believe that all of the facts contained in the above entitled civil Complaint are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass and Defendant, cause unnecessary delay to and Defendant, or create needless increase in the cost of litigation to any Defendant, named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by me where appropriate, I have not altered, changed, modified or fabricated exhibits, except some may contain my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, DOUGLAS KRUSCHEN, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: September 23, 2013



By: DOUGLAS KRUSCHEN
(Plaintiff)